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C O N F I D E N T I A L SECTION 01 OF 02 ISTANBUL 000369

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [AM](#) [TU](#)
SUBJECT: A LIFE COMBATTING ARTICLE 301

REF: A. 08 ANKARA 1142
[1](#)B. 08 ANKARA 0833
[1](#)C. 08 ANKARA 1194
[1](#)D. 07 ANKARA 0112

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Classified By: SHARON WIENER FOR REASONS 1.4B AND D

[1](#)1. Summary: On June 27, we met with Turkish publisher and freedom of expression activist Ragip Zarakolu to discuss his June 17 sentence in the first case tried under the amended Turkish Penal Code (TPC) Article 301 (insulting the Turkish nation) (refA). An Istanbul court sentenced Zarakolu to pay a fine of 1400 Turkish lira (USD 1100) or serve a five month prison sentence for publishing the book, "The Truth Will Set Us Free," addressing the 1915 mass-killing of Armenians. Zarakolu states he will not pay a fine, preferring to serve jail time should his recently-filed appeal fail. End Summary.

History of Prosecution for Defending Freedoms

[1](#)2. (SBU) Zarakolu is a Turkish citizen born in 1948 on Buyukada in the Sea of Marmara, an island known for its Greek and Armenian minority populations, where his father served as district governor. He says he began writing and publishing at the age of 20 and was first imprisoned at the age of 23 by the military government in power in 1970 for a suspected relationship with Amnesty International, an organization which was illegal at the time. He claims to have faced over 35 trials since then in which he has been accused of distributing separatist propaganda and insulting Turkishness; he was also banned from leaving the country between 1971 and 1991. A lighter story among those he related described his conviction in 1997 for publishing the comments of an American diplomat which included an expletive. The courts convicted him of violating public morality for failing to remove the expletive from the published document. In 1986 he was among 98 founders of the Human Rights Association of Turkey, which publishes an annual "Freedom of Expression Report" for Turkey.

[1](#)3. (U) Istanbul prosecutors initiated the current case

against Zarakolu four years ago under
TPC Article 159 -- Article 301's precursor-- for publishing a
Turkish translation of
Armenian-British writer George Jerjian's "The Truth Will Set
Us Free," a story of the writer's
family's experience in the 1915 massacres. The court
suspended the case numerous times, most
recently in early 2008, while Parliament debated Article 301
reforms (eventually passed on
April 30 (refB)).

Interpreting Amended Article 301

14. (SBU) According to Zarakolu, the founding of the Turkish
state in 1923 theoretically
distinguishes actions of the Turkish state and actions of
Turkic peoples of the Ottoman Empire.
While this might seem to allow for a more open discussion of
the events between 1915 and 1923,
Zarakolu says the Ministry of Justice convicted him using the
newly amended article, which
criminalizes insulting the Turkish nation, because, by
publishing a book that labels the events
of 1915 a genocide, he in essence accuses the founders of the
Turkish state of perpetrating
genocide. The individuals implicated in the crime became the
founding fathers, making the book
an insult to the Turkish state even though the events took
place before 1923, according to
Zarakolu.

15. (C) Under the continued threat of conviction, many
journalists self-censor and Zarakolu

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himself now finds different, safer ways to make statements
that might otherwise be found in
violation of the law. Although critics of article 301 had
hoped that the recent change would
moderate the chilling impact on free expression, the outcome
of the first case under the amended
article 301 does not offer much hope. Zarakolu expects his
appeal to be heard within one year
and is optimistic about the outcome, given the successful
appeal of the deputy editor of Hrant
Dink's newspaper Agos, Sarkis Saropian. Saropian and Hrant
Dink's son, Arant, were convicted
for republishing Hrant Dink's statement that the 1915
massacres were genocide, for which he
was convicted (reftel).

Cautious Optimism for Freedom of Expression

16. (C) Zarakolu confided that while he is not concerned about
his own safety as a Turkish --
as opposed to Armenian -- intellectual, he is troubled by the
physical danger presented by
violent ultra-nationalist groups, such as those linked to the
Ergenekon network, against those
perceived as "non-Turks" (e.g., Armenians and Greeks) who
push the limits of speech laws in
Turkey. He emphasized that conviction, not prosecution, in a
301 case is the riskier situation
for a private citizen, as it adds a sheen of credibility to
the claim of dangerous radical
groups that these individuals are indeed a threat to the
state. According to Zarakolu, the
increasing number of arrests of suspected members of the
Ergenekon group (refC) seems to have
reduced the threats to citizens suspected of violating
Article 301. In an attempt to suppress
what he described as "paranoia," Zarakolu chooses not to

contract a body guard. (Note: It is not clear to post that the threat level has diminished, particularly given the most recent round of Ergenekon arrests.)

17. (C) Referring to the closure case charging the ruling AKP with anti-secularist activities, Zarakolu noted that "every country does things to defend the status quo, but ours is a little odd." The current legal system is "scattered with strategically placed land-mines," threatening freedom of expression and democracy, he said, noting that only a new constitution can successfully protect those rights. He also contends that a turn away from the European Union accession process would be a death knell for the expansion of freedom of expression in Turkey.

18. (C) Comment: While Zarakolu reads the amendment to Article 301 to allow academics to make critical statements about activities which took place prior to 1923, that reading has yet to be supported in the courts. However, to Zarakolu his conviction shows that if a private citizen is party to a claim of genocide (i.e. the publisher), he or she can be found guilty of insulting the Turkish state by virtue of implicating its founders. The court's initial interpretation of amended Article 301 allows little space for discussion of the tragic events of 1915. Unless a more liberal approach is taken in the future, the amendments are not likely to bring about much change from the pre-existing situation in Turkey, in which the right of free expression has been substantially curtailed. End Comment.
WIENER